



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO INGENCO RENEWABLE DEVELOPMENT, LLC FOR INGENCO BRISTOL PLANT Registration No. 11733

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1 – 1309, and - 1316, between the State Air Pollution Control Board and INGENCO Renewable Development, LLC, for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable permits and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. “Board” means the State Air Pollution Control Board, a permanent citizens’ board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and - 1301.
2. “CFR” means the Code of Federal Regulations, as incorporated into the Regulations.
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

5. "Facility" means the INGENCO - Bristol Plant facility located at 2125 Shakesville Rd, in Bristol City, Virginia, which is permitted to operate a landfill gas to electricity facility.
6. "INGENCO" means INGENCO Renewable Development, LLC, a limited liability company authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. INGENCO Renewable Development, LLC is a 'person' within the meaning of Va. Code § 10.1-1300.
7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
8. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
9. "PCE" means a partial compliance evaluation by DEQ staff.
10. "Permit" means the minor New Source Review permit to modify and operate a landfill gas to electricity generating facility which was issued under the Virginia Air Pollution Control Law and the Regulations to INGENCO Renewable Development, LLC on October 15, 2013.
11. "Regulations" or "Regulations for the Control and Abatement of Air Pollution", means 9 VAC 5 chapters 10 through 80.
12. "SWRO" means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.
13. "Va. Code" means the Code of Virginia (1950), as amended.
14. "VAC" means the Virginia Administrative Code.
15. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

SECTION C: Findings of Facts and Conclusions of Law

1. INGENCO owns and operates the Facility in Bristol City, Virginia. The Facility is the subject of the Permit which allows the company to operate a landfill gas to electricity generating facility.
2. On January 20, 2017, Department staff conducted a PCE for review of the performance test results from the initial testing for one (1) group of six (6) gas engines firing on 100% distillate/diesel, 88% gas fraction and 94% gas fraction (permit requirement using approximately 92% landfill gas fraction) conducted on

November 1 & 2, 2016. Review of the submitted report demonstrated the test results for Carbon Monoxide were 31.00 lbs/hr and Nitrogen Oxides were 20.15 lbs/hr while operating at 88% gas fraction. Normal operation of the engines is at 94 percent gas fraction.

3. Condition No. 21 of the Permit states, "...Emissions from the engines (Ref. Nos. A1-A6, B1-B6 and C1-C6) during baseload operation shall not exceed the following limits:...

	<u>Each Stack...</u>
Nitrogen Oxides (as NO ₂)	11.2 lbs/hr
Carbon Monoxide	25.4 lbs/hr...

Baseload operation is defined as the operation of an engine at a gas fraction equal to or greater than 88 percent..."

5. 9 VAC 5-80-1180 requires that, "...C. Minor NSR permits may contain emissions standards as necessary to implement the provisions of this article and 9VAC5-50-260. The following criteria apply in establishing emission standards to the extent necessary to assure that emission levels are enforceable as a practical matter:...3. The standard may prescribe, as an alternative to or a supplement to a limit prescribed under subdivision 1 of this subsection, equipment, work practice, fuels specification, process materials, maintenance, or operation standards, or any combination of them..."
6. 9 VAC 5-50-260 requires that, "No owner or other person shall cause or permit to be discharged into the atmosphere from any affected facility any emissions in excess of emissions limitations representing best available control technology, as reflected in any term or condition that may be placed upon the minor NSR permit approval for the facility..."
7. 9 VAC 5-170-160(A) states: "The board may impose conditions upon permits and other approvals which may be necessary to carry out the policy of the Virginia Air Pollution Control Law, and which are consistent with the regulations of the board. Except as otherwise specified, nothing in this chapter shall be understood to limit the power of the board in this regard. If the owner or other person fails to adhere to the conditions, the board may automatically cancel the permit or approvals. This section shall apply, but not be limited, to approval of variances, approval of control programs, and granting of permits."
8. Va. Code § 10.1-1322(A) gives the Department the authority to issue, amend, revoke or terminate and reissue permits, and failure to comply with any condition of a permit is considered a violation of the Air Pollution Control Law.
9. On January 24, 2017, based on the results of the January 20, 2017 PCE, the Department issued a Notice of Violation No. ASWRO000574 to INGENCO for

the alleged violations described in paragraph C(2) above.

10. On February 3, 2017, INGENCO contacted Department staff electronically in response to the NOV.
 11. On February 28, 2017, Department staff and representatives of INGENCO discussed the alleged violations by conference call and submitted a follow-up timeline of events through electronic correspondence.
 12. On March 9, 2017, Department staff conducted a PCE for review of the Subpart ZZZZ Compliance Certification for the reporting period of January 1, 2017 through December 31, 2017 submitted January 30, 2017.
 13. 40 CFR 63.6650 (b)(2) states: "For semi-annual Compliance reports, the first Compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date follows the end of the first calendar half after the compliance date that is specified for your affected source in §63.6595."
 14. On March 24, 2107 the Facility submitted the 2016 Annual Update and Emission Statement with emission calculations. On April 4, 2017, Department staff conducted a PCE of the submitted reports. The Facility reported 0.29 lbs/hr SO₂ emissions for 2016.
 15. Condition 21 of the Permit states, "Emissions from the engines (Ref. Nos. A1 – A6, B1- combustion of natural gas in Unit 1, Unit 2, and auxiliary boilers (Reference Nos. CR1, CR2, and CR4) shall not exceed the limits specified below:...
- | | |
|----------------|----------------------|
| | <u>Each Stack...</u> |
| Sulfur Dioxide | 0.20 lb/hr..." |
16. On April 14, 2017, based on the results of the April 4, 2017 PCE, the Department issued a Notice of Violation No. ASWRO000574-002 to INGENCO for the alleged violation described in paragraph C(12) and C(14) above.
 17. On April 24, 2107, INGENCO submitted a letter requesting rescission of the statement contained in the April 14, 2017 Notice of Violation No. ASWRO000574-002 for late Subpart ZZZZ semi-annual reporting. The Department does not concur that INGENCO is subject to annual reporting as noted in the letter. However, upon further review the Department has determined that there are no reporting requirements for Subpart ZZZZ which apply to the Facility.
 18. On July 14, 2017, a modified Permit was issued for an increase in expected total reduced sulfur content of the landfill gas fuel and subsequent increase in sulfur

dioxide emissions from the dual fuel engines at the facility.

19. On August 16, 2017, INGENCO submitted a revised timeline of events by electronic correspondence.
20. Based on the results of the January 20, 2017 PCE, the February 28, 2017 conference call, the March 9, 2017 PCE, the April 4, 2017 PCE and the April 24, 2017 letter, the Board concludes that INGENCO has violated Permit Conditions 21 and 9 VAC 5-80-1180 and 9 VAC 5-50-260 as described in paragraphs C(2) and C(14).

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders INGENCO and INGENCO agrees to:

1. Perform the action described in Appendix A of this Order, and
2. Pay a civil charge of \$19,702 within 30 days of the effective date of the Order in settlement of the violation cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia", delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

INGENCO shall include its Federal Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, INGENCO shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of INGENCO for good cause shown by INGENCO, or on its own motion pursuant to the Administrative Process Act Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses only those violations specifically identified in Section C of this Order, NOV No. ASWRO000574 dated January 24, 2017 and NOV. No. ASWRO000574-002 dated April 14, 2017. This Order shall not preclude the

Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order

3. For purposes of this Order and subsequent actions with respect to this Order only, INGENCO neither admits nor denies the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. INGENCO consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. INGENCO declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board or Director to modify, rewrite, amend, or enforce this Order.
6. Failure by INGENCO to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. INGENCO shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. INGENCO shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. INGENCO shall notify DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of such delay or noncompliance;

- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition listed above, which the parties intend to assert will result in the impossibility of compliance, shall constitute waiver of any claim of inability to comply with a requirement of this Order.

- 9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and INGENCO. Nevertheless, INGENCO agrees to be bound by any compliance date, which precedes the effective date of this Order.
- 11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after INGENCO has completed all of the requirements of the Order.
 - b. INGENCO petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order, or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to INGENCO.

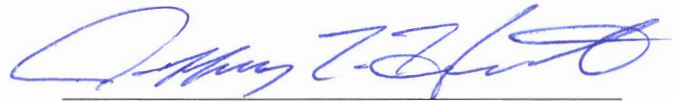
Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve INGENCO from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

- 12. Any plans, reports, schedules or specifications attached hereto or submitted by INGENCO and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
- 13. The undersigned representative of INGENCO certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind INGENCO to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible

official of INGENCO.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, INGENCO voluntarily agrees to the issuance of this Order.

And it is ORDERED this 11th day of September, 2017



Jeffrey L. Hurst - Regional Director
Department of Environmental Quality

INGENCO voluntarily agrees to the issuance of this Order.

Date: 9-7-17 By: [Signature]
Brad Burmaster, Sr. Vice President/General Manager
INGENCO

State of Virginia

City/County of Henrico

The foregoing document was signed and acknowledged before me this 7th day of
September, 2017 by Brad Burmaster who is
Sr Vice President/GM of INGENCO, on behalf of
the corporation.

[Signature]
Notary Public

276152
Registration No.

My commission expires: 2/28/2019

Notary Seal:



APPENDIX A SCHEDULE OF COMPLIANCE

1. INGENCO with the cooperation of the City of Bristol Integrated Solid Waste Management facility:

- a. Shall drill and install at least six (6) new gas extraction wells and connect them to the existing header completed by September 30, 2017. A notification shall be submitted to DEQ within 15 days of completion of connection to the existing header.
- b. Shall tune the wells to maximize landfill gas production completed by November 30, 2017. A notification shall be submitted to DEQ within 15 days of completion of the tuning of the wells.
- c. Shall conduct performance testing at 88% and 92% gas fractions to verify compliance with the NOx and CO emission limits required by the most current effective permits. Testing shall be completed by December 15, 2017. A protocol shall be submitted 30 days prior to performance testing. A copy of all test results shall be submitted to DEQ within 45 days of test completion. Prior to testing the Facility shall operate engines at approximately 94% gas fraction +/- 1.5% with the exception of startup, shutdown and malfunction in accordance with the permit dated October 15, 2013.

2. Certification of Documents and Reports

In accordance with 9 VAC 5-20-230(A), in all documents or reports, submitted to DEQ pursuant to this Consent Order, INGENCO, shall by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering and evaluating the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

3. DEQ Contact

Unless otherwise specified in this Order, INGENCO shall submit all requirements of Appendix A of this Order to:

Crystal C. Bazyk
Enforcement and Air Compliance/Monitoring Manager
VA DEQ – SWRO
355-A Deadmore Street
Abingdon, VA 24210
(276) 676-4829
crystal.bazyk@deq.virginia.gov